Supreme Court, U.S.
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OFFICE OF THE

No._____

In the

Supreme Court of the United States

October Term, 1998

Ralph L. Douros and Margaret D. Douros,
Petitioners,

v.

Sharon Savings Bank, formerly
Sharon Savings and Loan Association,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE PENNSYLVANIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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4988

QUESTIONS PRESENTED

1. Whether Pennsylvania Rules of Civil Procedure are designed to allow substantive due process for some while disenfranchising others deemed less worthy of this basic right.

2. Whether Pennsylvania Court officials are bound by the legal precepts of fair and reasonable notice as are the interested parties, no matter that which is stated or not stated within the legal statutes.

3. Whether, with special attention to Petitioner's status accorded under the body of laws throughout our Nation, Petioner/pro se counsel is receiving fair and equitable treatment in pursuit of this matter.

4. Whether laws of the state of Pennsylvania have been subrogated to the benefit of Respondents.

5. Whether there is simply the appearance of misconduct on the part of certain court officials during the course of these proceedings or have the occurrences of such taken place.

6. Whether the controlling legal factors regarding the U.S. Constitutional right to trial by jury rest firmly within the grasp of the individual citizen or are they in factual reality in the firm grasp of arbitrary, capricious and vindictive Pa. State authorities.

LIST OF PARTIES

The *Petitioners* in this matter include Ralph L. and Margaret D.Douros,private United States citizens.

The *Respondents* in this matter are Sharon Savings Bank, formerly known as Sharon Savings and Loan the legal entity to which original contract was made.

RULE 29.6 LIST

To the best of *Petitioners* knowledge, *Respondents* Sharon Savings Bank has neither parents nor subsidiaries.

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No. _____

In the
Supreme Court of the United States

RALPH L. DOUROS and MARGARET D. DOUROS,
Petitioners

v.

SHARON SAVINGS BANK, *formerly*
SHARON SAVINGS and LOAN ASSOCIATION,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

Petitioners pray that a writ of certiorari issue to review the judgment, opinion and order of the Pennsylvania Supreme Court which denied Petitioners interlocutory Petition by right to be heard by said Court.

OPINIONS/ORDERS BELOW

The Common Pleas Court of Delaware County, Pennsylvania denied Petitioners' demand for jury trial and motion for reconsideration. The Common Pleas Court opinion in this regard is dated January 22, 1998 which is included in the Appendix as Exhibit A. The Superior Court of Pennsylvania denied Petitioner's request for enlargement of time to file Petition by Order dated January 14, 1998 which is included in the Appendix as Exhibit B. Subsequent to Motion for Reconsidera- tion this same Court by Order dated February 12, 1998 denied Petitioner's Motion. This Order is included in the Appendix as Exhibit C. Pursuant to Pa. R.A.P. 2188, the Superior Court of Pennsylvania dismissed with prejudice Petitioner's request for Allowance of Appeal by Order dated April 9, 1998 which is included in the Appendix as Exhibit D.

The Supreme Court of Pennsylvania denied Petitioner's request for Allowance of Appeal pursuant to Pa. R.A.P. 1115 (d) by Order dated December 15, 1998 which is included in the Appendix as Exhibit E. Petitioner's subsequent Motion for Reconsideration was denied by Order dated March 10, 1999 which is included in the Appendix as Exhibit F.

OPINIONS/ORDERS BELOW CONSIDERED GERMANE

1. C.P. court opinion to order dated 15 November 1996, granting preliminary objections of Respondents and dismissing Petitioner's counterclaim with prejudice. This opinion was filed on January 23, 1997 and is included in the Appendix as Exhibit G.

2. C.P. court order dated 14 July 1997 denying Petitioner's motion for judgment on the pleadings and ordering sanctions against Petitioner

in the amount of $500.00 is included in the Appendix as Exhibit H.

3. C.P. court order dated 20 April 1999 for judgment in mortgage foreclosure in favor of Respondents is included in the Appendix as Exhibit I.

STATEMENT OF JURISDICTION

This Petition for Writ of Certiorari was originally filed by U.S. mail on April 1, 1999, twenty-one days subsequent to the final Order of the highest state court of jurisdiction which is within the ninety day rule limitation. By letter dated April 21, 1999 from the Office of the Clerk, Supreme Court of the United States, said Petition was returned to Petitioner for reformatting and resubmission by June 20, 1999.

Pursuant to 28 USCS 1257 this court has jurisdiction of matters taken from the final judgment or decree of the highest Court of a State in which the validity of a statute ...is drawn in question on the ground of its being repugnant to the Constitution or laws of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

UNITED STATES CONSTITUTION:

The Fifth Amendment to the United States Constitution provides:

...nor shall any person be deprived of life, liberty or property, without due process of law...

The Seventh Amendment to the United States Constitution provides:

> In suit at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...

The Fourteenth Amendment to the United States Constitution provides:

> ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person life, liberty , or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

PENNSYLVANIA STATE CONSTITUTION:

> Article 1 § 6 of the Pa. State Constitution provides: Trial by jury shall be as heretofore, and the right thereof remain inviolate. The General Assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case.

Historical Notes

Prior Constitution

Constitution of 1776, § 25 , provided that " trials shall be by jury as heretofore" and in the Declaration of Rights, clause 11, provided that in controversies respecting property and in suits between man and man the parties have a right to trial by jury which ought to be held sacred.

PENNSYLVANIA RULES OF CIVIL PROCEDURE:

Pa. R.C.P. 126 provides:

> The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

Pa. R.C.P. 127.(c) provides:

> When the words of a rule are not explicit, the intention of the Supreme Court may be ascertained by considering, among other matters (1) the occasion and necessity for the rule; (2) the circumstances under which it was promulgated; (3) the mischief to be remedied; (4) the object to be attained; (5)the prior practice, if any, including other rules and Acts of Assembly upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous history of the rule; and (8) the practice followed under the rule.

Pa. R.C.P. 128 provides:

> (a) That the Supreme Court does not intend a result that is absurd, impossible of execution or unreasonable;
>
> (b) That the Supreme Court intends the entire rule or chapter of rules to be effective and certain;
>
> (c) That the Supreme Court does not intend to violate the Constitution of the United States or of this Commonwealth;
>
> (d) That if the Supreme Court has construed the language used in a rule or statute, the Supreme Court in promulgating a rule on the same subject matter which employs the same language intends the same construction to be placed upon such language;
>
> (e) That the Supreme Court intends to favor the public interest as against any private interest;
>
> (f) That no rule shall be construed to confer a right to trial by jury where such right does not otherwise exist.

Pa. R.C.P. 133 provides:

> All laws shall be suspended to the extent that they are inconsistent with rules prescribed under the Constitution of 1968.

Pa. R.C.P. 205.2 provides:

> No pleading or other legal paper that complies with the Pennsylvania Rules of Civil Procedure shall be refused for filing by the prothonotary based on a requirement of a local rule of civil procedure or judicial administration.

Explanatory Comment-1985

A number of courts of common pleas have recently promulgated local rules which purport to facilitate judicial administration but which function to impair the statewide practice of law by imposing prerequisites to the filing of legal papers with the prothonotary. These requirements include appending a cover sheet to a complaint and the filing of a separate entry of appearance. While a legal court should be free to require additional information to aid in the orderly administration of justice, an out-of- county attorney or litigant should not be penalized with a missed filing date because of the failure to supply the required information. Therefore, new rule 205.2 requires the prothonotary to accept for filing all pleadings and other legal papers which comply with the statewide rules of civil procedure. Once the paper has been filed, the local court may require compliance with other local provision. The new rule attempts to strike a balance between local court administration and the requirements of a unified judicial system.

Pa. R.C.P. 234,3 provides:

(a) A party may compel the attendance of another party or an officer or managing agent thereof for trial or hearing by serving upon that party upon that party a notice to attend substantially in the form prescribed by Rule 234.7. The notice shall be served in advance of the date upon which attendance is required....

Pa. R.C.P. 1007.1 provides:

(a) In any action in which the right to jury trial exists, that right shall be deemed waived unless a party files and serves a written demand for a jury trial not later than

twenty days after service of the last permissible pleading. The demand shall be made by endorsement on a pleading or by a separate writing.

Pa. R.C.P. 4019. **SANCTIONS** provides:

(a)(1) "The court may, on motion, make an appropriate order..."

PENNSYLVANIA RULES OF APPELLATE PROCEDURE:

Pa. R.A.P. 105. provides:

(a) Liberal Construction and Modification of Rules.

These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every matter to which they are applicable. In the interest of expediting decision, or for other good cause shown, an appellate court may, except as otherwise provided in Subdivision (b)of this rule, disregard the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

(b) Enlargement of Time. An appellate court for good cause shown may upon application enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time, but the court may not enlarge the time for filing a notice of appeal, a petition for permission to appeal, or a petition for review.

Note

42 Pa. C.S. § 5504 (judicial extension of time) provides that the time limited by, inter alia, Chapter 55D (appeals) of the Judicial Code shall not be extended by order, rule or otherwise except that the time limited may be extended to relieve fraud or its equivalent, but that there shall be no extension as a matter of indulgence or with respect to any criminal proceeding. However, under 42 Pa. C.S. § 5571 (a)(appeals generally) statutory time limits under Chapter

55D do not apply to or other judicial review by the Supreme, Superior or Commonwealth Courts. Subdivision (b) of this rule is not intended to affect the power of a court to grant relief in the case of fraud or breakdown in the processes of a court.

Pa. R.A.P. 1701 provides:

(a) General Rule. Except as otherwise prescribed by these rules , after an appeal is taken or a review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.

(b) [Comprises paragraphs 1-6d which lists the specific authoritative actions permitted the trial court. The permitted actions are generally administrative and preservative to status quo and not necessarily germane to issues currently under review.They are hereby incorporated by reference. Petitioner reserves the right to restate, if necessary, in a future pleading.]

Pa. R.A.P. 1702 provides:

(b) Proceedings on Petition for Allowance of or Permission to Appeal.....failure to effect timely filing...or the denial of such a petition, shall automatically vacate any ancillary order entered order entered under this chapter. In such a case the clerk of the court in which the ancillary order was entered shall, on praecipe of any party to the matter, enter a formal order under this rule vacating any such ancillary order.

Pa. R.A.P. 1733 provides

(a) ....(the) court will maintain the res or status quo pending final judgment....

STATEMENT OF THE CASE

Subject action was initiated by respondents on August 14, 1996. Petitioner filed on September 18, 1996 an Answer, New matter and Counterclaim following a request for extension of time filed on September 9,1996.

On October 7, 1996, Respondents filed Preliminary Objections which were sustained by Order of C.P. judge Harry J. Bradley on November 15, 1996 and, as well, dismissed Petitioner's Counterclaim **with prejudice**.

Subsequent to interlocutory appeal of Order dismissing the above mentioned Counterclaim to the Pennsylvania Superior Court on December 10, 1996, and quash of said appeal by Superior Court on April 14, 1997, Petitioner filed a Motion for Judgment on the Pleadings This motion was denied by Order of C.P. judge Harry J. Bradley on July 14, 1997. In addition, sanctions were awarded to Respondents in the amount of five hundred Dollars ($500.00).

On June 17, 1997, Petitioner filed a Reply to Respondents' Response to Petitioner's Motion for Judgment on the Pleadings. As well as the aforesaid motion, Petitioner did file on June 17, 1997, a Motion to Strike Respondents' Reply to New Matter which they had filed on May 29, 1997.

On July 1, 1997, Respondents filed two pleadings. One, a Response to Petitioner's Reply to Respondents' Response to Petitioner's Motion for Judgment on the Pleadings. The second was a Reply to Petitioner's Motion to Strike Respondents May 29, 1997

reply to new matter which was filed with Petitioner's answer and counterclaim on September 9,1996 to initial complaint of August 14, 1996.

On July 21, 1997, Petitioner filed his first demand for trial by jury, precisely twenty days subsequent to the last, previous pleading filing. Included in the Appendix as Exhibit J are the three important, pertinent entries to subject C.P. court docket.

On July 25, 1997, Petitioner filed a motion for reconsideration regarding imposed money sanctions by way of above-said court order of July 16, 1997. Respondents filed a response on August 6, 1997.

On August 4, 1997, Petitioner filed a second jury trial demand. Petitioner was compelled to perform this secondary filing for the following reasons:

1. By way of instruction from the court administrator's letter dated July 24,1997, which is included in the Appendix as Exhibit K.

2. Due to the refusal of the Delaware County office of judicial support to accept the filing of the omitted local rule *206(B) cover page which caused said administrator to return the July 21, 1997, demand for trial by jury. Petitioner's cover letter dated August 1, 1997, is included in the Appendix as Exhibit L which displays his effort to file the omitted cover page.

On August 7, 1997, Respondents filed their response to Petitioner's original jury trial demand of July 21, 1997.

By C.P. order dated August 14, 1997 and signed by judge Clement J. McGovern, Petitioner' motion to strike was denied.

On August 15, 1997, Petitioner filed a motion for reconsideration of C.P. court order dated 14 July 1997, which denied Petitioner's motion for judgment on the pleadings and ordered sanctions against Petitioner.

Petitioner filed on August 25, 1997, a reply to Respondents' response to Petitioner's original motion for trial by jury. On September 2, 1997, Respondents filed a supplemental response to Petitioner's second demand for jury trial.

On September 22, 1997, judge Harry J. Bradley signed a court order again denying judgment on the pleadings; however, this order did vacate and set aside money sanctions previously awarded Respondents.

On October 1, 1997, a court order was signed by Clement J. McGovern denying Petitioner's demand for jury trial for it "appears from the record that said demand was not made timely". On October 21,1997, Petitioner filed a motion for reconsideration of this order, which was answered by Respondents by filing of response on November 10, 1997. By C.P. court order dated November 20, 1997, Petioner's motion for reconsideration was denied precipitating the onset of appeal to higher authority on December 5, 1997.

On December 8, 1997, a court order signed by C.P. judge Harry J. Bradley "continued indefinitely" this matter before C.P. court. An ensuing order signed by C.P. court judge Clement J. McGovern on December 9, 1997, compelling Petitioner's statement regarding matters complained. Said statement was filled by Petitioner on December 23, 1997.

Petitioner had on December 16, 1997, filed to the Superior Court of Pennsylvania a request for modification(or enlargement) of time to file petition for allowance of appeal for the reasons as stated therein. This request was denied by Superior court order dated January 14, 1998. An ensuing Petitioners request for reconsider - ation filed on January 16, 1998 was also denied by this court by order of February 12, 1998. Then, on April 9, 1998, same Superior court dismissed with prejudice the petition denied previously for failure to file "his brief".

On May 12, 1998, Petitioner filed for allowance of appeal to the Supreme Court of Pennsylvania. This was denied by said court order dated 15 December 1998, "pursuant to Pa. R.A.P. 1115(d)" which gives reason for denial as "failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration ". A January 6, 1999, motion for reconsideration by Petitioner was also denied by court order dated 10 March 1999 which necessitated this final appeal to this honorable higher court.

On April 19, 1999, an exparte C.P. court hearing was held with no knowledge of either Petitioner and only Respondents in attendance. By order of C.P. judge Harry J. Bradley on April 20,

1999, a default judgment was granted against Petitioners in favor of Respondents. On April 28, 1999, Petitioner filed a motion to vacate said order which is still pending before this common pleas court. In addition, Petitioner on May 6, 1999, filed a petition for stay of proceedings in the common pleas court to both the Pennsylvania Supreme court and C.P. court of Delaware County. Respondents filed a response to said petition on May 11, 1999. An amended petition for stay was subsequently filed by Petitioner on May 17,1999,

Respondents filed their response to the aforesaid amended petition on May 20, 1999. The filings successive to Petitioner's motion to vacate are pending before C.P. court as well. The Pennsylvania Supreme Court has refused to consider stay at this juncture and has remanded Petitioner's request for stay to the Common Pleas court of Delaware County.

REASONS FOR GRANTING THE WRIT

I. MISAPPLICATION OF THE WORD , SPIRIT AND INTENT OF THE FIFTH, SEVENTH AND FOURTEENTH U. S. CONSTITUTIONAL AMENDMENTS, AND MISAPPLICATION OF PENNSYLVANIA LAW AND RULES OF PROCEDURE.

The errors and/or omissions committed during this process have been many and have been indeed costly and injurious to Petitioners. The first of which was the dismissal with prejudice to Petitioner's counterclaim. Respondents in their preliminary objections first argued that "in the addendum clause of DOUROS'S Counterclaim, DOUROS requests costs and attorneys fees".

Secondly, they argue that "under Pennsylvania law, a cause of action for abuse of process is not ripe until the successful conclusion of the underlying cause of action". Third they argue "DOUROS has failed to state a cause of action upon which relief can be sought". Fourth they argue "DOUROS'S Counterclaim is legally insufficient". Fifth they argue "The inclusion of this Counterclaim, which is clearly impermissible under Pennsylvania state law, was brought in bad faith and is dilatory, obdurate, and vexatious". Sixth they argue "Defendant in an action of Mortgage Foreclosure may only plead a counterclaim which arises from the same transaction or occurrences as the mortgage foreclosure action". Seventh they argue that "Defendant's alleged counterclaim is improperly set forth as a counterclaim and is contrary to law". Eighth they argue "Neither the alleged abuse of process or wrongful credit reporting arise from the mortgage contract on which the action in mortgage foreclosure is based". Finally, Respondents allege "Defendant has misjoined a cause(d) of action".

Respondents memorandum of law in support of their preliminary objections rely solely upon the following:

1. Pa. R.C.P. 1028 which "provides for the filing of preliminary objections on the basis of the failure to conform to law or rule of court, legal insufficiency of a pleading in the nature of a demurrer, and misjoinder of a cause of action";

2. 42 Pa. C.S.A. § 2503 setting "forth the right of participants to receive counsel fees as taxable costs";

3. 42 Pa. C.S.A. § 8351 which "specifically provides that a

necessary element of this action is that the underlying proceedings have terminated in favor of the defendant".

4. Misjoinder of action pursuant to Pa. R.C.P.§1148 which provides"that counterclaim must arise out of the transaction or occurrences or series of transactions or occurrences from which the Plaintiff's action arose".

In the foregoing restatement of the crux of Respondents' preliminary objections they make nine allegations to which they correctly support only one by citation. That is to abuse of process.

Petitioner's response to the aforesaid averments were as follows:

1. "Pursuant to Pa. R.C.P. 1029....(b) Plaintiff's failure to deny and hence admission to allegations in Defendant's Answer to Complaint In Mortgage Foreclosure and New Matter has in fact immediately ripened Defendant's allegation of Abuse of Process".

2. "Defendant by direct averment or averment by reference alleged at least four causes of action: Unsworn Falsification to Authorities, Breach of Contract, Malicious Prosecution and Abuse of process."

3. Petitioner proceeded to amend his answer and new matter to include cause for extortion and violation of rights provided under the Fourteenth Amendment to the U.S. Constitution.

4. "Counterclaim is clearly permissible under Pennsylvania law; Pa. R.C.P. 1148 under Mortgage Foreclosure sets forth this provision." Further, "Defendant is pleading a counter-claim arising from the mortgage contract. This is the vehicle from which the original action in Mortgage Foreclosure has arisen. Action in Mortgage Foreclosure can not arise from within itself. Action in Mortgage Foreclosure is infallibly borne from the womb of its mother the Mortgage contract. Plaintiff's counsel themselves aver this very fact in No. 12 of their Preliminary Objections. Pro Se quotes: "Neither...arise from the Mortgage Contract on which the action in mortgage foreclosure is based".

Petitioner continued in his memorandum of law to argue cause for extortion, breach of contract , establishment of escrow account for remainder of payments due under the contract , contract issues of specific performance, expectation and remedy and for causes of abuse of process and malicious prosecution. Various citations of case law were stated in support thereof.

Subsequent to C.P. court order of 15 November 1996 granting Respondents' preliminary objections, Petitioner filed a interlocutory notice of appeal to Superior court on December 10, 1996.

Subsequent to C.P. court order dated 13 December 1996, Petitioner filed his reply regarding "Statement Of Matters Complained". In this filing cause for breach of contract was restated and complaint was lodged that the C.P. court "has either by oversight

or by outright rejection refused to consider the documented averments made by the Defendant". In addition, statements were made regarding abuse of process, malicious prosecution, violation of rights under the fourteenth Amendment to the U.S. Constitution, violation of the Robinson-Patman Act, notice by Respondents, privity of contract and that "the monetary figure set forth in Defendant's Counterclaim does not represent a list of attorney's fees or costs. The figure mentioned represents money damages of injury caused by Respondents.

In the opinion filed by the lower court on January 23, 1997, the honorable judge Harry J. Bradley addressed the issues of abuse of process, malicious prosecution and submission by Petitioner for bill of costs. Totally absent was court opinion to the causes as aforesaid mentioned by Petitioner which were stated and restated to the lower court. In addition, Petitioner did previously plead in the aforesaid statement of matters complained that subject counterclaim "is a separate matter from the original action but is attached and made part of the original since it arises from the same transaction or occurrence". It is proper and legal to join all causes of action, to incorporate claim for damages, and issue a statement to recoup costs in any law suit. This is precisely the extent to which Petitioner presented subject counterclaim lawsuit, nothing more, nothing less and, with the exception of claim for damages this is precisely the action taken by Respondents in their original complaint.

Respondents in their initial complaint did not specifically aver that their suit was for cause of breach of contract. They simply stated that "The mortgage is in default, because the monthly payment of principal and interest due the first day of February 1996 was not paid

on the said date nor prior to the due date of of the next monthly payment....". A list of alleged amounts due and attorney's fee followed. In addition, they did not cite the law and/or its provisions under which the contract was let, notwithstanding the fact that is clearly recognized within the mortgage agreement and bond which they submitted as Exhibit A and Exhibit B, respectively.

Petitioner, on the other hand, is required to cite the law or court rule without exception. The record will reveal that on more than one occasion citations were of no avail to petitioners pleadings. In fact, irrefutable evidence to the lower court that the material facts averred by Respondents to establish their prima facia case were completely false, yet had no impact on the sound reasoning or judicious processes of the lower court. For instance, Petitioner submitted photocopy of a paid receipt from Sharon Savings Bank and the canceled check which clearly proved that the February 1, 1996 had in fact been paid on that exact day. This was submitted as Exhibit A to Petitioners Answer. In addition, a photocopy of Petitioner's accelerated payment in the amount of two-thousand dollars($2,000.00) was written on January 1, 1996 and deposited by Respondents on January 3, 1996. In not one instance did Respondents allege this evidence to be forged or in any way altered.

In addition, Petitioner filed his answer, new matter and counterclaim as one pleading. The answer was numbered 1-6, new matter 7-12 and counterclaim 13-20. Petitioner did not declare by statement within the body of the counterclaim that his answer and new matter was to be incorporated. Is not the numbering sequence itself legally sufficient? When does due process and equal protection

begin to apply to Petitioners? As argued before the lower court, due process is not a simple process of allowing the filing of papers to the court. Access must be assured by hearing both parties and applying sound judicial reasoning to the weight and merit of pleadings equally.

Another notable exception granted Respondents was the granting of money sanctions against Petitioner simply for the asking in their "Response to Defendant's Motion For Judgment On The Pleadings" filed June 3, 1997. Respondents claim Petitioners said motion for judgment to have been frivolous. They did not cite the law or rule to be applied. Pa. R.C.P. 4019 clearly requires that sanctions may be awarded by the court "on motion", Indeed, the sanctions were set aside; however, only subsequent to an eventual motion for reconsideration by Petitioner.

Respondents again were permitted exceptional privilege by the C.P. court allowance to file an answer to Petitioner's new matter some two-hundred and fifty days subsequent to Petitioner's filing. Respondents allege they were not given proper notice in spite of the fact that their failure to earlier respond was argued by Petitioner many months prior in Petitioner's answer to preliminary objections filed on October 28, 1996. Precisely how much notice do Respondents require? How much notice are they truly legally entitled ? Why does it appear the rights accorded Respondents are extraordinarily pre-eminent to those of Petitioners? In this court, Petitioner's filings have been proper and timely. In this court, demands by the court for clarification or additional matter have been met within the time allotted Yet, when and where can it be revealed that justice is applied equally?

The common pleas court of Delaware County erred dramatically in the denial of Petitioner's demand for trial by jury.

Included in the Appendix as Exhibit J are the three pertinent entries to a certified copy of the C.P. docket and are as follows:

07/01/1997 12:48 P PLAINTIFF'S REPLY TO DEFENDANT'S MOTION TO STRIKE

07/16/1997 9:05A ORDER FILED & MOTION FOR JUDGMENT ON THE PLEADINGS DENIED. (BRADLEY,J.7-14-97) 236N/S 7-17-97.

07/21/1997 9:49A DEFENDANT'S MOTION FOR TRIAL BY JURY

The foregoing docket entries clearly reveal that Petitioner's demand for jury trial was filed precisely twenty days following the final pleading filed by Respondents on July 1, 1997 which complies with the requirements of Pa. R.C.P. 1007.1, JURY TRIAL DEMAND, WAIVER. Given the time allotted for pursuant to Pa. R.C.P. 106, COMPUTATION OF TIME, Petitioner's demand was, in fact, filed earlier than required.

The C.P. court was legally bound pursuant to Pa. R.C.P. 205.2 to accept Petitioner's subsequent filing of the omitted local rule *206(B) cover page and to preserve the date of filing of the original demand for jury trial. The foregoing facts were stated in Petitioner's "Reply to Response of Plaintiff, Sharon Savings Bank, formerly Sharon Savings and Loan Association, to Defendant's Motion for Trial by Jury" filed August 25, 1997 and in Petitioner's "Motion for

Reconsideration of Court Order dated October 1, 1997, Regarding Demand for Jury Trial" filed October 21, 1997.

The C.P. court requirement for a second demand for jury trial was improper, illegal and repugnant to the methods and practices of not only the higher courts of jurisdiction, but to the preservation doctrine promulgated by the Seventh Amendment to the U.S. Constitution.

Respondents argue in their replies to the aforesaid demands for trial by jury, which was filed by way of motion that "Clearly Pro Se Defendant does not understand the distinction between a pleading and a petition or motion"(see Plaintiff's Response to Defendant's Motion for Reconsideration filed on November 10,1997). In addition, and in more than one responsive pleading to Petitioners demands repeatedly state "the docket speaks for itself".

Under the Pa. Rules section PLEADINGS, Pa. R.C.P. 1017, **PLEADINGS ALLOWED** limits such to "a complaint, an answer thereto, a reply if the answer contains new matter or a counterclaim, a counter-reply if the reply to a counterclaim contains new matter, a preliminary objection and an answer thereto". However, in the explanatory comment-1991 to this rule states "Former Rule 1017(b) categorized preliminary objections as a 'motion' for certain types of relief, a "petition' for other types of relief, and a 'demurrer.'" The use of these terms was appropriate when the rule was initially promulgated in 1946, enabling practitioners to relate the new rule to prior practice. Today, the use of the terms 'motion' and 'petition' in this context creates confusion." Under this section rests Pa. R.C.P. 1021 (a) which states "Any pleading demanding relief....", (d) " the

court on its own motion or motion of any party...."

Petitioner, in his reply to court order dated December 9, 1997, regarding matters complained, filed on December 23,1997, did aver as follows:

> 5. ....A pleading contains allegations or claims, declarations and statements by the parties. Pro se Defendant hereby asserts that akin to a pleading by preliminary objections, a motion is a pleading as well that compels the Court to make a yea or nay decision and to issue an order therefrom.
>
> 6. Notice is required by Pa. R.C.P. and Local rules for most filings submitted to the Court. In fact, pro se Defendant has received three(3) notices from this Court regarding the due date for filing this very reply. Yet, in preservation of such an inalienable right to trial by jury Defendant has heard not so much as a whisper that the judicial clock for timely filing had begun to tick. The aforesaid rules are legally deficient and must be amended to provide notice to all parties to preserve and protect this paramount right.

Notwithstanding the foregoing, the docket speaking for itself clearly reveals that the demand for jury trial was filed twenty days following a reply by the Respondents.

The C.P. court opinion filed January 22,1998, cites two cases in support of the court's denial to Petitioners jury trial demand. The

first case cited is Goodman by Goodman v. Pizzutillo, Pa. Super , 682 A.2d 363(1996). In this case the court dismissed a motion for reconsideration of prior dismissal of preliminary objections. On appeal,the Pennsylvania Superior Court found that pursuant to Pa. R.C.P. 311(b), in this instance, appeal is interlocutory and not appealable.

The second case cited was Valentine v. Wroten, 397 Pa. Super. 526, 580 A. 2d 757(1990). In this case, the trial court denied reconsideration of previous order. Appellant filing of appeal was untimely and the Pennsylvania Superior Court denied jurisdiction.

It is clear that the aforesaid cases have no bearing to Petitioner's right by law in this instance an interlocutory order which would cause irrecoverable loss. Petitioner is provided this right pursuant to 42 Pa. C.S. 702(b) and Pa. R.A.P. 1311, interlocutory appeals by permission. It matters not that the appeal is taken subsequent to denial of motion for reconsideration. Noteworthy is the fact that the appellate court docketing statement demands that appellant acknowledge whether reconsideration was sought prior to appeal.

The final inclusion to this portion regarding errors of said C.P. court centers on the exparte hearing held on April 19, 1999, and the ensuing default judgment entered against Petitioners on April 20, 1999. This matter was in continuance status by virtue of the common pleas court order dated December 8, 1997. The record and docket reveals that this order was not set aside allowing resumption of this matter by law in the lower court and which is specifically prohibited pursuant to Pa. R.A.P. 1701 and Pa. R.A.P. 1702.

The aforesaid process or lack of process represent an ample sampling of Petitioner's cause to seek trial by jury.

II. ERRORS AND/OR OMISSIONS BY SUPERIOR COURT OF PENNSYLVANIA.

On December 16, 1997, Petitioner requested modification of time to file petition due to the lower court order of December 9,1997, which pursuant to Pa. R.A.P. 1925(b) Petioner was compelled to answer. The order of November 20, 1997, denying motion for reconsideration was not mailed by the Delaware County office of judicial support until December 2, 1997. The aforesaid order of 9 December was not received until December 10, 1997. Having experience to this legal circumstance, Petitioner felt it improbable that a proper, timely filed Petition to Superior court was unlikely, particularly without the lower court opinion in hand; hence, the request for extention of time within which to file Petition for review and relief. The reply to the 9 December order was hand delivered to C.P. judges chambers on December 23, 1997. This allowed by law and rule thereto eight calendar days prior to the last day for filing Petition. With the Christmas holiday, the weekend of 27 and 28 December, and the new year holiday falling within this time frame, four days now remain for the lower court to research, prepare the opinion, secure his honor's signature, to enter said opinion to the docket, date stamp, mail and finally to allow Petitioner to receive this vital document. Subject opinion, in fact, was signed by the honorable Clement J. McGovern on January 21, 1998, and filed to the C.P. docket on January 26, 1998. The Superior court order denying the requested extention of time was filed and mailed on January 14, 1998.

The Pennsylvania courts' processes disallowed Petitioner's

ability to properly prepare a document in the nature of a Petition for Allowance of Appeal and effectively barred Petitioner's access to the Superior Court of Pennsylvania. This document requires a fair amount of research, substantial enough time for careful thought, organization preparation, copying and service to the parties. Could anyone accomplish these tasks within two to three days? Yes, it is possible to achieve. However, Petitioner submits that it beyond unlikely that such a document would be worthy of consideration for review.

Petitioner's motion for reconsideration of the January 14, 1998 order denying extention of time to file petition was mailed to the court on January 16, 1998. This motion requested reconsideration as follows:

> 3. On December 3, 1997, Petitioner was advised by C.P. judge Harry J. Bradley's law clerk, (XXXXXXXXXXX) per telephone conversation that the order (to be) appealed was filed and that the Honorable Judge Harry J. Bradley was proceeding with bench trial at 10:00 A.M. on December 5, 1997 unless an appeal was filed prior to that time. Petitioner had no other option but to file Notice of Appeal immediately due to time constraint.
>
> 6. Petitioner's request of December 16, 1997 for enlargement of time for filing Petition for Allowance of Appeal was answered on January 14, 1998 and received on January 15, 1998. If this Court is compelled to bind Petitioner to strict adherence to Pa. R.A.P. 105(b) and not Pa. R.A.P. 105(a) would not it have been provident in the

interest of fairness, justness and preservation of Petitioner's rights to issue this notice(order denying) immediately so that Petitioner could have filed his petition by January 3, 1998?

In the memorandum of law in support of subject motion Petitioner submitted as follows:

1. Pa. R.A.P 104 and particularly Pa. R.A.P. 105(a) by way of their curative nature and intent are applicable to subject motion and in fact support the legal position of Petitioner.

2. 42 Pa. C.S. § 5504 and Pa. C.S. § 5571 as cited on page 8 of this petition.

4. Subject matter falls within the scope of appeals generally and more specifically the breakdown of process.

6. A citizen's right to trial by jury of his peers must be preserved at each and every instance of process, particularly with regard to constraints of time, tactics of time delay, tactics of forfeiture of time, breakdown or lack of notice procedure, or any event or impropriety which causes this right to be forever lost.

The aforesaid verbal order to file instant appeal caused Petitioner to lose twenty-eight days of precious time to prepare documents for filing. Under Pennsylvania law and pursuant to Pa. R.A.P. 903 appellant is granted thirty days within which to file notice.

With the denial of extention of time to file Petition for allowance of appeal, filing of briefs is precluded. Petitioner is at a loss to understand the issuance of an order dismissing his appeal with prejudice for failure to file his brief.

The Supreme Court of Pennsylvania chose not to exercise its authority to cure the errors and omissions peculiar to this matter and denied petition and motion for reconsideration for reasons, as yet, unknown.

In prior practice before this honorable court, "the right of the defendants" to have a "jury pass upon the issues of fact" wrote justice John M. Harlan in Martinon v. Fairbanks, 112 U.S. 670, 5 S.C.321 to which he added "that right could have been waived but it could not have been taken from them". In Baylis (etc) v. Travelers' Ins. Co.(etc), 113 U.S. 316, 5 S.C. 497 justice Stanley Matthews in his opinion states that "the right to trial by jury in the courts of the United States is expressly secured by the seventh article of amendment to the Constitution" and continues further that a party can only waive their right to jury trial "by stipulation in writing" and that the "court has always regarded with jealousy" this right. In later, more contemporary practice this court has leaned toward a more restrictive interpretation of the Seventh Amendment guaranty of preservation of right to trial by jury.

CONCLUSION

Wherefore, in consideration of the foregoing, Petitioner prays this honorable Court grant his petition for writ of certiorari.

Respectfully submitted,

RALPH L. DOUROS
Counsel of Record, pro se
120 Brookside Rd.
Newtown Square, Pa. 19073
(610) 353-3639

APPENDIX

PAGE

A. Common pleas court opinion of January 22,1998.....A-1

B. Superior Court order dated January 14,1998.....B-1

C. Superior Court order dated February 12,1998.....C-1

D, Superior Court order dated April 9,1998.....D-1

E. Pa. Supreme Court order dated December 15,1998.....E-1

F. Pa. Supreme Court order dated March 10,1999.....F-1

G. C.P. court opinion dated January 23,1997.....G-1

H. C.P. court order dated 14 July 1997.....H-1

I. C.P. court order dated 20 April 1999.....I-1

J. C.P. court docket entries.....J-1

K. C.P. Court Administrator's letter dated July 24,1997.....K-1

L. Petitioner's letter of August 1,1997.....L-1

IN THE COURT OF COMMON PLEAS OF
DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION -LAW

Sharon Savings Bank, Formerly : NO. 96-9438
SHARON SAVINGS AND LOAN :

v. :

RALPH LOUIS DOUROS and :
MARGARET DALE DOUROS :

ALBERT J. CRAWFORD, ESQUIRE, Attorney for the Plaintiff
DEFENDANTS, Pro se

OPINION

McGovern, J. FILED: 1/22/98

Defendant, Ralph L. Douros, appeals from this Court's Order dated November 20,1997, which denied Defendant's Motion for Reconsideration.

The instant action is for Mortgage Foreclosure and was commenced by the filing of a Complaint August 14,1996. On August 4, 1997, Defendant filed a Motion for Trial by Jury. Following the filing of a response to the Motion by Plaintiff, the Court, by Order dated October 1,1997, denied Defendant's Motion.

On October 21,1997, Defendant filed a Motion for reconsideration of the Court's Order of October 1,1997, which denied his Motion for Trial by Jury. By Order dated November 20, 1997, the Court denied Defendant's Motion for Reconsideration. It is

from this Order that Defendant has now filed a "Notice of Appeal by Permission" to the Superior Court of Pennsylvania.

An Order denying reconsideration of an existing Order is not subject to review on appeal and thus not appealable. Goodman by Goodman v. Pizzutillo, Pa.Super.__, 682 A. 2d 363(1996); Valentine v. Wroten, 397 Pa,Super 526, 580 A.2d 757(1990). Accordingly, Defendant's appeal from this Court's Order of November 30, 1997 denying his Motion for Reconsideration is improper and should be quashed.

BY THE COURT:

" s/ Clement J McGovern, Jr".
CLEMENT J. McGOVERN,JR., J.

Sharon Savings Bank, etc.	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
	:	
V.	:	
	:	(C.P. Delaware County
	:	No. 96-9438)
Ralph Louis Douros And	:	
Margaret Dale Douros	:	No. 5037 Philadelphia, 1997
		Filed: January 14, 1998

ORDER

This appellant's request for modification of time is **Denied.**

Per Curiam

Sharon Savings Bank, etc.	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
	:	
V.	:	
	:	(C.P. Delaware County
	:	No. 96-9438)
Ralph Louis Douros And	:	
Margaret Dale Douros	:	No. 5037 Philadelphia, 1997
		Filed: February 12, 1998

ORDER

The appellant's motion for reconsideration of this court's 6 order of January 14, 1998 is **Denied.**

Per Curiam

Sharon Savings Bank, etc.	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
	:	
V.	:	
	:	(C.P. Delaware County
	:	No. 96-9438)
Ralph Louis Douros And	:	
Margaret Dale Douros	:	No. 5037 Philadelphia, 1997
		Filed: April 9, 1998

ORDER

Since the appellant has failed to file his brief by the designated date of March 14, 1998 the appeal at No. 5037 Philadelphia, 1997 is hereby **DISMISSED** with prejudice. See Pa. R.A.P. 2188.

Per Curiam

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SHARON SAVINGS BANK,	:	No. 365M.D.Alloc.Dkt 1998
FORMERLY, SHARON SAVINGS	:	
AND LOAN ASSOCIATION,	:	Petition for Allowance of
Respondent,	:	Appeal from the Per Curiam
	:	Order of the Superior court
v.	:	
	:	
RALPH LOUIS DOUROS AND	:	
MARGARET DALE DOUROS,	:	
Petitioners.	:	

ORDER

PER CURIAM:

AND NOW, this 15th day of December, 1998, the Petition for Allowance of Appeal is DENIED pursuant to Pa.R.A.P. 1115(d).

TRUE AND CORRECT COPY

ATTEST: Dec 23 1998

"s/ Joan L Stehulak "
Joan L. Stehulak, Esquire
Deputy Prothonotary

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SHARON SAVINGS BANK,	:	No. 365M.D.Alloc.Dkt 1998
FORMERLY, SHARON SAVINGS	:	
AND LOAN ASSOCIATION,	:	Motion for Reconsideration
Respondent,	:	
	:	
v.	:	
	:	
RALPH LOUIS DOUROS AND	:	
MARGARET DALE DOUROS,	:	
Petitioners.	:	

ORDER

PER CURIAM:

AND NOW, this 10th day of March, 1999, the Motion for Reconsideration is DENIED.

TRUE & CORRECT COPY

ATTEST: MAR 11 1999

"s/ Joan L Stehulak "
Joan L. Stehulak, Esquire
Deputy Prothonotary

IN THE COURT OF COMMON PLEAS OF
DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION -LAW

SHARON SAVINGS BANK, formerly : NO. 96-9438
SHARON SAVINGS AND LOAN :
ASSN.
VS. :

RALPH L. DOUROS, & :
MARGARET D. DOUROS :

ALBERT J. CRAWFORD, ESQUIRE, Attorney for the Plaintiff
DEFENDANTS, Pro se Defendants

OPINION

A Mortgage Foreclosure was filed in the instant action on August 14, 1996. On September 18, 1996, an Answer and Counterclaim was filed by Defendant which alleged that the Plaintiff "has wrongfully initiated suit against counterclaimant and engaged in abusive process'. A true and correct copy of the Answer and Counterclaim is attached hereto as Exhibit "A".

Plaintiff, Sharon Savings Bank, timely filed Preliminary Objections on October 7.1996. On November 15, 1996, this Court granted Plaintiff's Preliminary Objections and Dismissed Defendant's Counterclaim with Prejudice. On December 10,1996, Defendants filed a notice of Appeal, On December 13, 1996, Defendants were directed to file A Concise Statement of Matters Complained of on Appeal pursuant to 1926(b) of the rules of Appell-

ate Procedure. Defendants complied with said Order, thus necessitating this Opinion.

Pennsylvania Rule of Civil Procedure 1028 provides for the filing of Preliminary Objections on the basis of the failure of a pleading to conform to a law or rule of court, legal insufficiency of a pleading in the nature of a demurrer, and a misjoinder of a cause of action. The statutory basis for a counterclaim is that the claim filed by Plaintiff represents an abuse of process pursuant to 42 Pa.C.S.A. § 2503. This statute prescribes the right of participants to receive counsel fees as taxable costs. Delaware County Local Rule 903 provides that a bill of costs may be filed within ten (10) days after final decree, judgment or award or within ten (10) days after final decision on appeal. A bill of costs is not ripe until the conclusion of the matter and was properly stricken from Defendant's counterclaim.

Additionally, it appears that pro se defendant may also be pursuing a cause of action for the wrongful use of civil proceedings under 42 Pa.C.S.A. § 8351. Similarly, this provision specifically provides that a necessary element of this cause of action is that the underlying proceeding have terminated in the favor of the Defendant. The inclusion of Defendant's counterclaim was inappropriate and subject to Preliminary Objections pursuant to Pa.R.C.P. 1028. The Defendant in a counterclaim can not set forth a basis for recovery under the abuse of process or for the wrongful use of civil proceedings until the conclusion of the mortgage foreclosure action is decided in Defendant's favor.

After a thorough review of the entire record, we conclude that no error was committed when this court granted Plaintiff's Preliminary Objections.

BY THE COURT

"S/ Harry J. Bradley "

HARRY J. BRADLEY, Judge

IN THE COURT OF COMMON PLEAS OF
DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION -LAW

SHARON SAVINGS BANK, formerly SHARON SAVINGS AND LOAN ASSOCIATION 9 Chester Pike Darby, PA 19023 Plaintiff	:	Folio No. In Mortgage Foreclosure No. 96-9438
v.		
RALPH LOUIS DOUROS and MARGARET DALE DOUROS 120 Brookside Road Newtown Square, PA 19073 Defendants	:	

Premises
120 Brookside Road
Newtown Square, PA 19073

ORDER

AND NOW, this 14th day of July, 1997, upon consideration of the Motion For Judgment on the Pleadings and Plaintiff's Response thereto , it is hereby Ordered and Decreed that said Motion is DENIED and it is further ordered that sanctions are awarded in favor of the Plaintiff in the amount of five hundred ($500.00) dollars.

"s/ Harry J. Bradley"
J.

IN THE COURT OF COMMON PLEAS OF
DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION -LAW

SHARON SAVINGS BANK : NO. 96-9438

:

v. :

RALPH L. DOUROS, ET AL :

Albert J. Crawford, Esquire, Attorney for the Plaintiff
One West Second Street, Media, PA 19063

Ralph L. Douros, Pro se
120 Brookside Road, Newtown Square, PA 19073

ORDER

AND NOW, to wit, this 20th day of April, 1999, pursuant to Pa.R.C.P. 218(b)(1) and 218(c), it is hereby **ORDERED** and **DECREED** that judgment in mortgage foreclosure is entered in favor of plaintiff.

BY THE COURT

" s/ Harry J. Bradley "
HARRY J. BRADLEY, J.

OFFICE OF JUDICIAL SUPPORT
COUNTY OF DELAWARE PAGE 1
RUN DATE 04/27/1999

96-009438

SHARON SAVINGS BANK/FKA
AND
SHARON SAVINGS AND LOAN ASSOCIATION

VS.

CERTIFIED AS TRUE AND CORRECT
COPY FROM THE RECORD,
"s/ Lara M. Barkett "

DOUROS, RALPH LOUIS
AND
DOUROS, MARGARET DALE

* * * * * * * * * * *

PLAINTIFFS
SHARON SAVINGS BANK/FKA
ATTY-008899 CRAWFORD, ALBERT J. JR

SHARON SAVINGS & LOAN ASSOCIATION
ATTY-008899 CRAWFORD, ALBERT J. JR

DEFENDANTS
DOUROS, RALPH LOUIS
ATTY-PRO SE
120 BROOKSIDE RD.
NEWTOWN SQ, PA 19073

DOUROS, MARGARET DALE
ATTY-PRO SE
120 BROOKSIDE RD.

07/01/1997 12:48 P PLAINTIFF'S REPLY TO DEFENDANT'S MOTION TO STRIKE

07/16/1997 9:05 A ORDER FILED & MOTION FOR JUDG- - MENT ON THE PLEADINGS

DENIED. (BRADLEY J. 7-14-97) 236N/S 7-17-97.

07/21/1997 9:49 A DEFENDANT'S MOTION FOR TRIAL BY JURY

COUNTY OF DELAWARE
OFFICE OF COURT ADMINISTRATOR
COURT HOUSE, MEDIA PA 19063
(610) 891-4550
FAX: (610) 566-9128
GERALD C. MONTELLA, ESQ
DISTRICT COURT ADMINISTRATOR

Ralph L. Douros
120 Brookside Road
Newtown Square, PA 19073

July 24, 1997

In Re: Sharon Savings Bank VS Douros 96-9438

Dear Counsel:

The motion/petition you filed on 7/21/97 in the above referenced case has been received in the Court Administrator's Office. You failed to include the following:

_____Delaware County Miscellaneous Form	
_____Delaware County Notice to Serve Form	
_____Rule Page	xxxxxxx 206(B) Cover Page
_____Copies	_____Verification
_____Stamped Envelopes	_____Certified Envelopes
_____Certificate of Service	_____Order

Your motion/petition is being returned to the Office of Judicial Support. It will not be processed. You may refile your motion/petition including all necessary documents and it will be processed accordingly.

Sincerely,

GCM/jn

"s/ Gerald C. Montella"
Gerald C. Montella
District Court Administrator

K-1

Ralph L. Douros
120 Brookside Rd.
Newtown Sq., Pa 19073
(610) 353-3639

Honorable Judge Harry J. Bradley
Court Of Common Pleas
Media Courthouse
Media, Pa. 19063

August 1,1997

Re.: Doc. No. 96-9438

Your Honor:

As requested by the District Court Administrator, attached is the 206(B) cover page which was inadvertently ommited from my Motion for Trial by Jury dated 21 July 97.

Please forgive this oversight.

Respectfully yours,
"s/ Ralph L. Douros "
Ralph L. Douros
Counsel pro se